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2 A Limited Liability Partnership
3 Including Professional Corporations
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12 Attorneys for Plaintiff BLEND, LLC,
13 a California Limited Liability Company

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17
18 SAN FRANCISCO DIVISION

19 BLEND, LLC, a California limited liability
20 company,

21 Plaintiff,

22 v.

23 GLENWOOD SMOKED PRODUCTS,
24 INC., an Idaho corporation, GLENWOOD
25 SNACKS, LLC, an Idaho limited liability
26 company, MITCH SCOTT, an individual,
27 CLARK SCOTT, an individual, SCOTT
28 ZABRISKIE, an individual, and DANIEL
HALLER, an individual,

Defendants.

Case No. 19-cv-03834-DMR

STIPULATED PROTECTIVE ORDER

AS MODIFIED IN SECTION 6.3

Magistrate Judge Donna M. Ryu

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: Such confidential and proprietary materials, information, and tangible things may consist of: sales, cost, pricing information (including but not limited to product pricing and pricing arrangements with vendors/suppliers), and profitability information, including future sales/financial projections (and including expert opinions or reports derived from such information); confidential information relating to third parties (including identifying information related to suppliers); customer lists; business/strategy information; trade secrets within the meaning of the Uniform Trade Secrets Act; non-public marketing information including future marketing plans; documents reflecting marketing strategies; ingredients lists, product formulations, recipes, or similar such information; internal communications and analyses as to labeling claims, ingredients, and formulations; and any other information or tangible thing that qualifies for protection under Federal Rule of Civil Procedure 26(c).

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
2 (as well as their support staff).

3 2.4 Designating Party: a Party or Non-Party that designates information or items
4 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

5 2.5 Disclosure or Discovery Material: all items or information, regardless of the
6 medium or manner in which it is generated, stored, or maintained (including, among other
7 things, testimony, transcripts, and tangible things), that are produced or generated in
8 disclosures or responses to discovery in this matter.

9 2.6 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation and who is serving or acting as an expert witness or as a
11 consultant in this action.

12 2.7 House Counsel: attorneys who are employees of a party to this action.
13 House Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
17 this action but are retained to represent or advise a party to this action and have appeared
18 in this action on behalf of that party or are affiliated with a law firm which has appeared on
19 behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, experts, and Outside Counsel of Record (and their support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
27 their employees and subcontractors.

28 2.13 Protected Material: any Disclosure or Discovery Material that is designated

1 as “CONFIDENTIAL.”

2 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material (as defined above), but also (1) any information copied or extracted from
7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
8 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
9 that might reveal Protected Material. However, the protections conferred by this
10 Stipulation and Order do not cover the following information: (a) any information that is in
11 the public domain at the time of disclosure to a Receiving Party or becomes part of the
12 public domain after its disclosure to a Receiving Party as a result of publication not
13 involving a violation of this Order, including becoming part of the public record through
14 trial or otherwise; and (b) any information known to the Receiving Party prior to the
15 disclosure or obtained by the Receiving Party after the disclosure from a source who
16 obtained the information lawfully and under no obligation of confidentiality to the
17 Designating Party. Any use of Protected Material at trial shall be governed by a separate
18 agreement or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations imposed
21 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or
22 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
23 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
24 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
25 trials, or reviews of this action, including the time limits for filing any motions or
26 applications for extension of time pursuant to applicable law.

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each

1 Party or Non-Party that designates information or items for protection under this Order
2 must take care to limit any such designation to specific material that qualifies under the
3 appropriate standards. The Designating Party must designate for protection only those
4 parts of material, documents, items, or oral or written communications that qualify – so
5 that other portions of the material, documents, items, or communications for which
6 protection is not warranted are not swept unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that
8 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
9 to unnecessarily encumber or retard the case development process or to impose
10 unnecessary expenses and burdens on other parties) expose the Designating Party to
11 sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this
16 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that
17 qualifies for protection under this Order must be clearly so designated before the material
18 is disclosed or produced. Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
21 that the Producing Party affix the legend "CONFIDENTIAL" to each page of the
22 Disclosure or Discovery Material. For Disclosure or Discovery Material where only a
23 portion of a document or page of a document is subject to a "Confidential" designation, a
24 Party may designate the entire page as "Confidential" subject to further meeting and
25 conferring and agreement by counsel as to redactions or other reasonable solutions to limit
26 the Confidential designation to the Confidential portion at the request of any Party.

27 A Party or Non-Party that makes original documents or materials available for
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and
 2 before the designation, all of the material made available for inspection shall be deemed
 3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 4 copied and produced, the Producing Party must determine which documents, or portions
 5 thereof, qualify for protection under this Order. Then, before producing the specified
 6 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
 7 that contains Protected Material.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 9 that the Designating Party either (i) identify on the record, before the close of the
 10 deposition, hearing, or other proceeding, all protected testimony, or (ii) by written notice,
 11 sent to all Parties within 30 calendar days of the deposition or other testimony, provided
 12 that only those portions of the transcript designated as CONFIDENTIAL be treated as
 13 such. The Parties may modify this procedure for any particular deposition or other
 14 testimony, through agreement on the record at such deposition or hearing.

15 (c) for information produced in some form other than documentary and for
 16 any other tangible items, that the Producing Party affix in a prominent place on the exterior
 17 of the container or containers in which the information or item is stored the legend
 18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
 19 protection, the Producing Party, to the extent practicable, shall identify the protected
 20 portion(s).

21 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
 22 qualified information or items does not, standing alone, waive the Designating Party’s
 23 right to secure protection under this Order for such material. Upon timely correction of a
 24 designation, the Receiving Party must make reasonable efforts to assure that the material is
 25 treated in accordance with the provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
 28 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s

1 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
 2 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
 3 does not waive its right to challenge a confidentiality designation by electing not to mount
 4 a challenge promptly after the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 6 process by providing written notice of each designation it is challenging and describing the
 7 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
 8 written notice must recite that the challenge to confidentiality is being made in accordance
 9 with this specific paragraph of the Protective Order. The parties shall attempt to resolve
 10 each challenge in good faith and must begin the process by conferring directly (in voice to
 11 voice dialogue; other forms of communication are not sufficient) within 14 days of the date
 12 of service of notice. In conferring, the Challenging Party must explain the basis for its
 13 belief that the confidentiality designation was not proper and must give the Designating
 14 Party an opportunity to review the designated material, to reconsider the circumstances,
 15 and, if no change in designation is offered, to explain the basis for the chosen designation.
 16 A Challenging Party may proceed to the next stage of the challenge process only if it has
 17 engaged in this meet and confer process first or establishes that the Designating Party is
 18 unwilling to participate in the meet and confer process in a timely manner.

19 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 20 parties shall comply with the court's Standing Order regarding resolution of
 21 intervention, the ~~Designating Party shall file and serve a motion to retain confidentiality~~
 22 ~~discovery disputes and present the dispute in a joint letter to the court.~~
 23 ~~under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)~~
 24 ~~within 21 of the parties agreeing that the meet and confer process will not resolve their~~
 25 ~~dispute. Each such motion must be accompanied by a competent declaration affirming that~~
 26 ~~the movant has complied with the meet and confer requirements imposed in the preceding~~
 27 ~~paragraph. Failure by the Designating Party to make such a motion including the required~~
 28 ~~declaration within 21 days shall automatically waive the confidentiality designation for~~
 29 ~~each challenged designation. In addition, the Challenging Party may file a motion~~
 30 ~~challenging a confidentiality designation at any time if there is good cause for doing so,~~

~~including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.~~

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued

1 by the Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served with the
3 subpoena or court order shall not produce any information designated in this action as
4 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
5 issued, unless the Party has obtained the Designating Party’s permission. The Designating
6 Party shall bear the burden and expense of seeking protection in that court of its
7 confidential material – and nothing in these provisions should be construed as authorizing
8 or encouraging a Receiving Party in this action to disobey a lawful directive from another
9 court.

10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
11 THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by a
13 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
14 produced by Non-Parties in connection with this litigation is protected by the remedies and
15 relief provided by this Order. Nothing in these provisions should be construed as
16 prohibiting a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to
18 produce a Non-Party’s confidential information in its possession, and the Party is subject
19 to an agreement with the Non-Party not to produce the Non-Party’s confidential
20 information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-
22 Party that some or all of the information requested is subject to a confidentiality agreement
23 with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated
25 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
26 specific description of the information requested; and

27 (3) make the information requested available for inspection by the
28 Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to a Receiving Party that certain inadvertently produced material is subject to a claim of privilege or other protection, the rights and obligations of the Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). In addition, if the Receiving Party has reason to believe that privileged or protected materials were produced inadvertently, then the Receiving Party shall promptly notify the Producing Party and meet and confer in good faith regarding the status and treatment of the material.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any

1 person to seek its modification by the court in the future.

2 12.2 Right to Assert Other Objections. By stipulating to the entry of this
3 Protective Order no Party waives any right it otherwise would have to object to disclosing
4 or producing any information or item on any ground not addressed in this Stipulated
5 Protective Order. Similarly, no Party waives any right to object on any ground to use in
6 evidence of any of the material covered by this Protective Order.

7 12.3 Filing Protected Material. Without written permission from the Designating
8 Party or a court order granting a motion to seal after appropriate notice to all interested
9 persons, a Party may not file in the public record in this action any Protected Material. A
10 Party that seeks to file under seal any Protected Material must comply with Civil Local
11 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
12 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
13 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected
14 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
15 protection under the law. If a Receiving Party's request to file Protected Material under
16 seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party
17 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless
18 otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph 4,
21 each Receiving Party must return all Protected Material to the Producing Party or destroy
22 such material. As used in this subdivision, "all Protected Material" includes all copies,
23 abstracts, compilations, summaries, and any other format reproducing or capturing any of
24 the Protected Material. Whether the Protected Material is returned or destroyed, the
25 Receiving Party must submit a written certification to the Producing Party (and, if not the
26 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
27 (by category, where appropriate) all the Protected Material that was returned or destroyed
28 and (2) affirms that the Receiving Party has not retained any copies, abstracts,

1 compilations, summaries or any other format reproducing or capturing any of the Protected
 2 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
 3 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 4 correspondence, deposition and trial exhibits, expert reports, discovery documents,
 5 attorney work product, and consultant and expert work product, even if such materials
 6 contain Protected Material. Any such archival copies that contain or constitute Protected
 7 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

8
 9 **IT IS SO STIPULATED**, through Counsel of Record.

10
 11 Dated: January 10, 2020 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12 By /s/ Christopher Van Gundy
 13 CHRISTOPHER VAN GUNDY
 14 ABBY H. MEYER

15 Attorneys for Plaintiff BLEND, LLC,
 16 a California Limited Liability Company

17 Dated: January 10, 2020 MCCAFFERY HOSKING, LLP

18 By /s/ Jeffrey Hosking
 19 JEFFREY D HOSKING
 20 JASON B. SHANE

21 Attorneys for Defendants
 22 GLENWOOD SNACKS, LLC, SCOTT
 ZABRISKIE AND DANIEL HALLER

23 Dated: January 10, 2020 MURRAY, ZIEL, & JOHNSTON, PLLC

24 By /s/ Paul D. Ziel
 25 PAUL D. ZIEL

26 Attorneys for Defendant
 27 GLENWOOD SMOKED PRODUCTS, INC.
 28

1 Dated: January 10, 2020

LITTLER MENDELSON, P.C.

2
3 By

/s/ Adam Bouka

ADAM BOUKA

4 Attorneys for Defendants
5 GLENWOOD SMOKED PRODUCTS, INC.,
6 MITCH SCOTT AND CLARK SCOTT
7

8 **FILER'S ATTESTATION**

9 Pursuant to Civil L.R. 5-1(i)(3) regarding signatures, I, Christopher Van Gundy,
10 attest that concurrence in the filing of this document has been obtained from each
11 of the other signatories. I declare under penalty under the laws of the United States
12 of America that the foregoing is true and correct. Executed this 10th day of January, 2020,
13 at San Francisco, California.

14 /s/ Abby Meyer

Abby Meyer
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PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

Dated: Jan. 21, 2020

UNITED STATES DISTRICT JUDGE

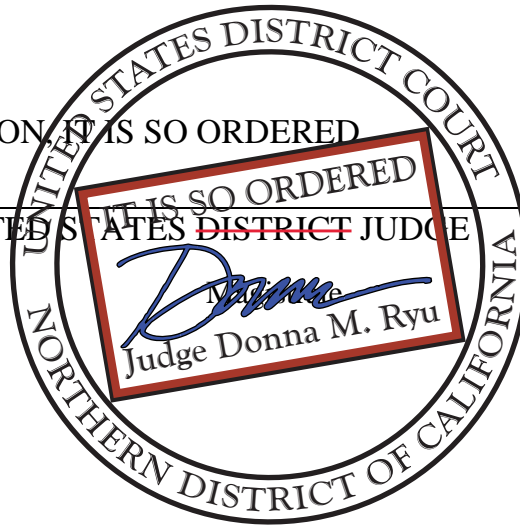


EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have
 read in its entirety and understand the Stipulated Protective Order that was issued by the
 United States District Court for the Northern District of California on [_____] in the
 case of *Blend LLC v. Glenwood Smoked Products, Inc., et al.*, Case No. 19-cv-03834-DMR.
 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
 and I understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____